

**VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY
STATUS (37 CFR 1.9(f) AND 1.27 (c)) - SMALL BUSINESS CONCERN**

Docket No.
533/050

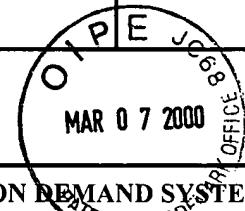
Serial No.
09/459,237

Filing Date
12/10/99

Patent No.

Issue Date

Applicant/ **Gerald T. Caracciolo, Steven Zack**
Patentee:



Invention: **RATE GENERATOR IN A VIDEO ON DEMAND SYSTEM HAVING MULTIPLE CONSTANT BIT RATE DATA**

I hereby declare that I am:

- the owner of the small business concern identified below:
- an official of the small business concern empowered to act on behalf of the concern identified below:

NAME OF CONCERN: **DIVA Systems Corporation**

ADDRESS OF CONCERN: **800 Saginaw Drive, Redwood City, CA 94063**

I hereby declare that the above-identified small business concern qualifies as a small business concern as defined in 13 CFR 121.3-18, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees under Section 41(a) and (b) of Title 35, United States Code, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the above identified invention described in:

- the specification filed herewith with title as listed above.
- the application identified above.
- the patent identified above.

If the rights held by the above-identified small business concern are not exclusive, each individual, concern or organization having rights to the invention is listed on the next page and no rights to the invention are held by any person, other than the inventor, who could not qualify as an independent inventor under 37 CFR 1.9(c) or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e).

Each person, concern or organization to which I have assigned, granted, conveyed, or licensed or am under an obligation under contract or law to assign, grant, convey, or license any rights in the invention is listed below:

- no such person, concern or organization exists.
- each such person, concern or organization is listed below.

FULL NAME _____
ADDRESS _____

Individual Small Business Concern Nonprofit Organization

FULL NAME _____
ADDRESS _____

Individual Small Business Concern Nonprofit Organization

FULL NAME _____
ADDRESS _____

Individual Small Business Concern Nonprofit Organization

FULL NAME _____
ADDRESS _____

Individual Small Business Concern Nonprofit Organization

Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27)

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b))

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

NAME OF PERSON SIGNING: Stephanie A. Storms

TITLE OF PERSON SIGNING

OTHER THAN OWNER: Senior Vice President/General Counsel

ADDRESS OF PERSON SIGNING: DIVA Systems Corporation

800 Saginaw Drive

Redwood City, CA 94063

SIGNATURE:

Stephanie A. Storms

DATE:

2/16/00



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO/TITLE
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09/459,237 12/10/99 CARACCIOLLO G 533/050

0222/0121

THOMASON MOSER & PATTERSON
THE GALLERIA 2 BRIDGE AVENUE
POST OFFICE BOX 8160
RED BANK NJ 07701

NOT ASSIGNED

MAR 07 2000

2711

DATE MAILED:

01/21/00

NOTICE TO FILE MISSING PARTS OF APPLICATION
Filing Date Granted

An Application Number and Filing Date have been assigned to this application. The items indicated below, however, are missing. Applicant is given TWO MONTHS FROM THE DATE OF THIS NOTICE within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a). If any of items 1 or 3 through 5 are indicated as missing, the SURCHARGE set forth in 37 CFR 1.16(e) of \$65.00 for a small entity in compliance with 37 CFR 1.27, or \$130.00 for a non-small entity, must also be timely submitted in reply to this NOTICE to avoid abandonment.

If all required items on this form are filed within the period set above, the total amount owed by applicant as a
 small entity (statement filed) non-small entity is \$

1. The statutory basic filing fee is:

missing.
 insufficient.

Applicant must submit \$ *85* to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).

2. The following additional claims fees are due:

\$ _____ for _____ total claims over 20.

\$ _____ for _____ independent claims over 3.

\$ _____ for multiple dependent claim surcharge.

Applicant must either submit the additional claim fees or cancel additional claims for which fees are due.

3. The oath or declaration:

is missing or unsigned.
 does not cover the newly submitted items.

An oath or declaration in compliance with 37 CFR 1.63, including residence information and identifying the application by the above Application Number and Filing Date is required.

4. The signature(s) to the oath or declaration is/are by a person other than inventor or person qualified under 37 CFR 1.42, 1.43 or 1.47.

A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.

5. The signature of the following joint inventor(s) is missing from the oath or declaration:

An oath or declaration in compliance with 37 CFR 1.63 listing the names of all inventors and signed by the omitted inventor(s), identifying this application by the above Application Number and Filing Date, is required.

6. A \$50.00 processing fee is required since your check was returned without payment (37 CFR 1.21(m)).

7. Your filing receipt was mailed in error because your check was returned without payment.

8. The application was filed in a language other than English.

Applicant must file a verified English translation of the application, the \$130.00 set forth in 37 CFR 1.17(k), unless previously submitted, and a statement that the translation is accurate (37 CFR 1.52(d)).

9. OTHER:

Direct the reply and any questions about this notice to "Attention: Box Missing Parts."

Hand Casta
A copy of this notice MUST be returned with the reply.

Customer Service Center
Initial Patent Examination Division (703) 308-1202

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03/09/2000 072618 00000041 200782 360.00 CH
01 FC:201 02 FC:205 65.00 CH

SECRET

PATENT APPLICATION

Assistant Commissioner for Patents
Box Missing Parts
Washington, D. C. 20231



Sir:

In response to the "Notice to File Missing Parts of Application" (PTO-1533) dated January 21, 2000, we received in connection with the following US patent application:

Applicant(s): **Caracciolo et al.**

Title of application: **RATE GENERATOR IN A VIDEO ON DEMAND SYSTEM HAVING MULTIPLE CONSTANT BIT RATE DATA**

Serial No.: **09/459,237**

Filed: **December 10, 1999**

Attorney Docket No.: **533/050**

We enclose the following material herewith:

- Declaration;
 Verified statement claiming small entity status;
 Verified English translation of the application;
 Our check in the amount of \$_____ to cover the basic filing fee of \$_____, additional claim fees of \$_____ and the surcharge under 37 CFR 1.16(e) in the amount of \$_____;
 Copy of PTO-1533 (Notice to File Missing Parts) issued in connection with this application.

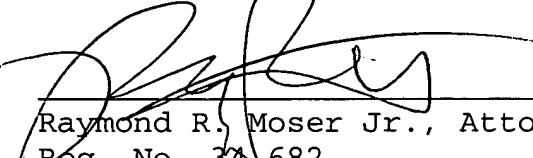
We have also enclosed the following item(s) in connection with this application:

- A claim to priority
 Priority Document;
 Other: Assignment of Application by Gerald T. Caracciolo And Steven Zack to DIVA Systems Corporation
 Information Disclosure Statement, PTO 1449.

Please charge the Application Fee in the amount of \$ 380.00, the surcharge under 37 CFR 1.16(e) in the amount of \$ 65.00, and any additional fees, as appropriate, to Deposit Account 20-0782. To facilitate this charge a duplicate copy of this letter is also enclosed herewith.

Respectfully submitted,

2-21-00


Raymond R. Moser Jr., Attorney
Reg. No. 34 682
(732) 530-9404

Thomason, Moser and Patterson, LLP
Attorneys At Law
2-40 Bridge Avenue
P.O. Box 8160
Red Bank, NJ 07701

CERTIFICATE OF MAILING under 37 C.F.R. 1.8(a)

I hereby certify that this correspondence is being deposited on 2/23/2000, 1900 with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to the Assistant Commissioner for Patents, Box Missing Parts, Washington, D.C. 20231.

Kathleen M. Ybarra
Signature
February 23, 2000
Date of signature